

# **EXHIBIT B**

**In The Matter Of:**  
*CYNTHIA PAJAK v.*  
*UNDER ARMOUR, INC., ET AL*

---

*BRIAN BOUCHER*  
*November 20, 2020*

---

*Reedy Court Reporting*  
*304.615.6725*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

\* \* \* \* \*

CYNTHIA D. PAJAK,  
Plaintiff,

vs. CIVIL ACTION NO. 1:19-cv-160

UNDER ARMOUR, INC.  
UNDER ARMOUR RETAIL, INC.,  
AND BRIAN BOUCHER,  
Defendants.

\* \* \* \* \*

Zoom deposition of BRIAN BOUCHER taken by the  
Defendant under the West Virginia Rules of Civil  
Procedure in the above-entitled action, pursuant to  
notice, before Teresa Reedy, a Registered Professional  
Reporter, at 8:00 a.m., on the 20th day of November,  
2020.

REALTIME REPORTERS, LLC  
713 Lee Street  
Charleston, WV 25301  
(304) 344-8463  
realtimereporters.net

APPEARANCES:

APPEARING FOR THE PLAINTIFF:

Larry J. Rector, Esquire  
Allison B. Williams, Esquire  
Alisa Lazar, Esquire  
STEPTOE & JOHNSON, PLLC  
400 White Oaks Boulevard  
Bridgeport, WV 26330

APPEARING FOR THE DEFENDANT UNDER ARMOUR, INC.:

Justin Harrison, Esquire  
Grace E. Hurney, Esquire  
JACKSON KELLY, PLLC  
500 Lee Street, Suite 1600  
Charleston, WV 25301

APPEARING FOR THE DEFENDANT BRIAN BOUCHER:

Scott Kaminksi, Esquire  
KAMINSKI LAW, PLLC  
P.O. Box 3548  
Charleston, WV 25335

ALSO PRESENT:

Kristen Herbert, in-house counsel for Under  
Armour

1 relationship with all the people I worked with at Under  
2 Armour.

3 Q. Did you text anybody else asking them to hook  
4 up with you?

5 MR. KAMINSKI: Object to form. You can  
6 answer.

7 A. I don't -- I didn't text anybody to hook up  
8 with me, but, again, you're putting that into a context  
9 of something that is no different than meeting or, you  
10 know, visiting. And so there was many times where I  
11 asked other people if we were going to meet, are we  
12 going to go to a local place and have a drink and chat  
13 about business or something else. So there was many  
14 different text exchanges that I had coming to me or  
15 going out to others with regard to meeting and  
16 connecting regarding business or otherwise.

17 Q. When you left Under Armour, did you keep your  
18 company-issued cell phone?

19 A. No, I ported my number but I returned my cell  
20 phone to the company.

21 Q. Who did you provide it to?

22 A. Jeanie DiCisco.

23 Q. Did you delete your text messages before  
24 returning it to the company?

1           A. The company had scanned my phone prior to  
2       leaving and wiped the entire phone and then everything  
3       was deleted from that point forward.

4           Q. You say the company had -- explain that again.  
5       What did you say?

6           A. The company -- before I left the company they  
7       had a -- they had taken my phone to scan any messages,  
8       emails or whatever because I had asked to keep my phone  
9       for 30 days and I ported the number. And so I turned  
10      my laptop and my phone in so they could have full  
11      access to anything that was on those and then I was  
12      able to keep my phone, change carriers, kept the same  
13      number.

14          Q. Prior to giving the phone to the company, did  
15      you delete your text exchanges with Kristen Gladkowski?

16          A. I believe I did.

17          Q. Okay. Prior to giving the phone to the  
18      company, did you delete your text messages with Cyndi  
19      Pajak?

20          A. I had turned in everything with regard to my  
21      exchanges with Cyndi Pajak whether it be email, text or  
22      otherwise. Again, they scanned my phone for a, you  
23      know, full recovery of anything that I had on there  
24      with regard to any exchanges with anybody text or

1 otherwise.

2 Q. When did you delete the text messages you had  
3 with Kristen Gladkowski prior to giving your phone to  
4 Under Armour?

5 A. Again, I don't recall exactly when. Again, I  
6 think after the phone was scanned is when everything  
7 was wiped and deleted and I changed carriers and kept  
8 the number. So I think it was right around the time  
9 that I left after Under Armour had access to my phone  
10 and laptop was when everything was wiped clean.

11 Q. That's when Under Armour wiped it, correct?

12 A. They -- yeah, they did. I turned in my laptop  
13 and then they scanned my phone and wiped it. I still  
14 had service obviously for 30 days per my separation  
15 agreement or when I separated and then I sent the phone  
16 back to them as soon as got my new phone and ported the  
17 number.

18 Q. My question, though, to you is prior to giving  
19 the phone to Under Armour and allowing them to wipe it,  
20 when did you delete text messages from your phone?

21 A. I don't think I deleted anything from my phone  
22 before they had wiped it in March.

23 Q. So you believe that when you gave the phone to  
24 Under Armour it still had all of the text messages that

1 you had exchanged with Kristen Gladkowski?

2 A. I believe it did.

3 Q. Did it have all the text messages that you  
4 exchanged with other subordinates of yours at Under  
5 Armour when you gave them your cell before you left?

6 A. Again, I can't speak to what the scanning of  
7 the phone extracted and pulled, but my understanding is  
8 that they had access to anything that I had texted for  
9 them to be able to scan the phone and get copies of any  
10 correspondence I had with any subordinates or partners  
11 or anyone at Under Armour for that matter.

12 Q. Was your phone an iPhone?

13 A. It was, yes.

14 Q. Did you use an iCloud backup?

15 A. I believe I did.

16 Q. And what would have been your password for the  
17 iPhone that you had at Under Armour?

18 A. I don't remember that.

19 Q. Did you provide that to Under Armour when you  
20 gave them the device?

21 A. I did.

22 Q. Did you provide them to the access codes  
23 needed for the iPhone backup that you used?

24 A. Yeah, they had access to all of that when they



1 scanned it, yes.

2 Q. So it's your testimony that Under Armour  
3 should have all of the data, text messages and emails  
4 that would have been on your phone at the time you gave  
5 it to them before you left?

6 A. Again, I don't know the exact parameters of  
7 what they did in scanning the phone before I had left,  
8 but they had full access to everything that you  
9 mentioned with regard to a password to enter into the  
10 phone or any iCloud account that I do.

11 Q. You knew that your phone prior to your  
12 departing in March of 2019 was the subject of a  
13 litigation hold; isn't that true?

14 A. That's correct.

15 Q. How were you made aware that your phone was  
16 the subject of a litigation hold?

17 MR. KAMINSKI: Let me interpose an  
18 objection to the extent that Mr. Boucher learned that  
19 through Under Armour's counsel as an employee of Under  
20 Armour. I believe that would be protected by  
21 attorney/client privilege. However, I do think you're  
22 allowed to know if he knew that there was a litigation  
23 hold. So you can proceed to answer if you are able to  
24 without divulging attorney/client privilege,

1 Mr. Boucher.

2 A. I received an email notification that there  
3 was a -- that I was not to delete, remove or do  
4 anything with regard to emails or any other  
5 correspondence that I had with Ms. Pajak or anything  
6 associate with that complaint I guess is what I would  
7 characterize.

8 Q. And that included your Outlook folders as well  
9 you testified to earlier?

10 A. That would include any correspondence or any  
11 file or anything, correct.

12 Q. When did you get the email notification of the  
13 litigation hold?

14 A. I don't recall the exact date, Mr. Rector. I  
15 believe it was in January.

16 Q. Of 2019?

17 A. Correct.

18 Q. That could have been as much as two months  
19 before you left in March, correct?

20 A. Again, I don't recall the exact date, but it  
21 was definitely a time frame by which it was before I  
22 left the company. I believe it to be some time in  
23 January or February, but I can't recall the exact date.

24 Q. How did you come to leave the company?

1 separated with a package. It's -- that's a pretty  
2 common practice when you're talking about performance  
3 issues leaders is if we get to that point and we had to  
4 put a package together for Ms. Pajak. So it's not  
5 uncommon to have those conversations what you're going  
6 down a performance path with somebody as a potential  
7 option if you get to that.

8 Q. Is that a common practice at Under Armour or  
9 in your prior experience in retail?

10 A. It's both. You know, it's been a -- you know,  
11 I would say Under Armour was not quite as -- they were  
12 a little bit more -- they weren't quite as open I guess  
13 is the right term as some of my prior companies with  
14 regard to offering people severance packages as a means  
15 by which to help them transition out of the company  
16 that Under Armour was, but certainly Under Armour did  
17 offer packages to people in the past, and so that's  
18 where the conversation originated with Mr. Toner and  
19 myself.

20 Q. Bear with me just a second.

21 Mr. Boucher, I want to change the subject  
22 to your iPhone. Before you left Under Armour, Under  
23 Armour requested that you hand over your iPhone for  
24 imaging; is that right?

1 A. Correct.

2 Q. Do you recall who you handed it to?

3 A. Kristen Herbert.

4 Q. Just so the record's clear, she's in-house  
5 counsel at Under Armour?

6 A. Correct.

7 Q. And you did that your last day of employment;  
8 is that correct?

9 A. That's correct.

10 Q. Mr. Boucher, I'll represent to you that Under  
11 Armour took an image of your cell phone and was unable  
12 to locate any text between you and Ms. Kristen  
13 Gladkowski. Do you have any explanation as to why that  
14 occurred?

15 A. Again, I don't know if I had the backup on or,  
16 you know, certainly as I was getting ready to leave the  
17 company, I cleared up a lot of emails. Everything that  
18 was related to the Cyndi Pajak situation had been  
19 forwarded to Jim Toner and anything else both on my  
20 phone and email I would have gotten rid of, you know,  
21 for -- I didn't need it and Under Armour didn't need  
22 it. So that may have been the case why they didn't  
23 have any emails or text messages between Kristen and  
24 myself.

1 Q. Okay. That may have been true for text  
2 messages between you and others, is that correct, not  
3 just Ms. Gladkowski?

4 A. Sure.

5 Q. Okay. Just to be clear. You're not accusing  
6 Under Armour of destroying evidence, are you?

7 A. Absolutely not.

8 Q. Okay. Bear with me for just a second.

9 MR. HARRISON: And, Counsel, if you don't  
10 mind taking a two-minute break, we can go off the  
11 record and, Scott, you can probably count it against my  
12 time if you want. I just need to check on something.  
13 I don't want to belabor this.

14 (Break taken.)

15 BY MR. HARRISON:

16 Q. Mr. Boucher, I only have a few more questions  
17 for you. You testified earlier that your departure  
18 from Under Armour was voluntary, correct?

19 A. Correct.

20 Q. Nobody at Under Armour asked you to leave?

21 A. Absolutely not.

22 Q. Your departure from Under Armour didn't have  
23 anything to do with Cyndi Pajak?

24 A. Zero.